

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No. 4293 of 2006
Date of Decision: 15.1.2007

Ajay Jaiswal and another

...Appellants

Versus

State of Haryana and others

....Respondents

Coram: Hon'ble Mr. Justice Hemant Gupta.

Present: Shri M.L. Gupta, Advocate, and
Shri Sumeet Goyal, Advocate, for the appellants.

HEMANT GUPTA, J.

Shri S.K.S. Bedi, Advocate, present in Court,
appears on behalf of respondent No.4.

The plaintiffs are in second appeal aggrieved against the judgment and decree passed by the learned first Appellate Court, whereby the plaint was ordered to be returned to the plaintiffs after returning a finding that such suit is maintainable before the Principal Court of original civil jurisdiction as well as for want of service of notice under Section 80 of the Code of Civil Procedure.

Learned counsel for the appellants states that in view of the fact that notice under Section 80 of the Code of Civil Procedure had not been served, the learned first Appellate Court should have rejected the plaint, which would have enabled the plaintiffs to file a fresh suit after serving a due notice in terms of Section 80 of the Code of Civil Procedure.

Learned counsel for respondent No.4 states that it was never conceded before the learned first appellate Court that the plaint

be ordered to be returned to the plaintiff.

Since the learned first Appellate Court recorded a finding that notice under Section 80 of the Code of Civil Procedure was required to be served and has not been served and that the learned trial Court has no jurisdiction to entertain the suit, I deem it appropriate to accede to the argument of the learned counsel for the appellant. Consequently, the plaint is ordered to be rejected for want of a proper notice and for lack of jurisdiction.

The present appeal stands disposed of in the above terms.

15-01-2007
ds

(HEMANT GUPTA)
JUDGE